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DEPARTMENT FOR EUR/CE

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TAGS: [GM](#) [MARR](#) [NATO](#) [PREL](#) [AF](#)  
SUBJECT: NATO SOFA STATUS FOR USAFRICOM NON-DOD CIVILIANS:  
CHARGE DELIVERS LETTER

REF: A. A. BERLIN 1033  
[1](#)B. B. STATE 167990  
[1](#)C. C. BERLIN 00090  
[1](#)D. D. STATE 07402

Classified By: A/DCM JEFF RATHKE. REASONS 1.4 (b) AND (d).

[1](#)1. (U) On August 6, 2008, Charge d'Affaires Koenig met with newly appointed MFA State Secretary Peter Ammon and delivered a letter in response to the letter Embassy Berlin received (dated July 14, 2008) from Foreign Office Legal Adviser Georg Witschel on SOFA issues related to non-DOD U.S. Government civilian employees serving at USAFRICOM (reftel A). Witschel's letter was in reply to the Embassy's June 19, 2008 letter, which requested a response to the Embassy's January 25, 2008 Diplomatic Note on the status under the NATO SOFA of U.S. Government civilian employees serving at USAFRICOM (reftels B, C, and D).

[1](#)2. (SBU) The letter was coordinated with the Department of State and USAFRICOM and read as follows:

Dear Dr. Witschel:

The United States appreciates Germany's continued support for the new United States Africa Command (AFRICOM) as set forth in your letter of July 14, 2008, addressing U.S. Government civilian employees at AFRICOM. However, there are several issues we would like to clarify.

Our non-paper, dated April 11, 2008, and my letter, dated June 19, 2008, explain that under United States law, U.S. Government civilian employees may be dual-appointed to the Department of Defense and another federal agency. As a result, these personnel become Department of Defense (DoD) employees. In the case of AFRICOM, they work in furtherance of the Command's mission, and serve under the command's authority and supervision. As we conveyed in our previous correspondence, it is our intention, at present, to effect dual-appointments to the DoD for most new civilians from other U.S. Government agencies working at AFRICOM. However, while we anticipate that the total number of such dual-appointments would not exceed 100, we do not believe we are legally limited to 100 dual-appointed civilians since they are DoD employees. The number of DoD employees who can serve in Germany - including dual-appointed personnel - is limited only by the Presence Convention.

In addition, the phrase in Article I, "in the employ of an armed service," is flexible enough to cover any government employee whose services are utilized or engaged by an armed service, provided they accompany the force. Therefore, we believe that U.S. civilian employees who are not dual-appointed to DoD are also covered by the NATO SOFA.

Our Diplomatic Note, dated January 25, 2008, and my previous

letter addressed the status of civilian employees who are not dual appointed. Although at this juncture we can address most of AFRICOM's needs through the use of dual-appointments, we would also like to further pursue a method of obtaining SOFA status for a small number of civilian employees, who for reasons of U.S. employment law, might not be eligible for dual-appointment. Consistent with prior practice, an exchange of diplomatic notes providing SOFA coverage for this small number of civilian employees would be, in our view, an acceptable method of achieving this goal.

The unique mission of AFRICOM reinforces the need for flexibility in interagency participation and the application of NATO SOFA coverage. Interagency cooperation is an organic feature of AFRICOM. It reflects AFRICOM's innovative nature as "Vernetzte Sicherheit" in practice. It is essential that we find a way to develop this feature of AFRICOM, and to extend this innovation to other U.S. military commands. This can best be accomplished with the flexibility to bring personnel on board using a variety of personnel options, including dual-appointment as DoD employees, when appropriate, or establishing their employee status through other means than "appointment." Especially important in this regard is that the U.S. Government agencies retain the ability to send liaison officers to the military commands.

Finally, we interpret your letter as reiterating the fact that U.S. civilian personnel assigned to military organizations, including AFRICOM, are inherently working in support of military forces. If your intended meaning was otherwise, however, we would be concerned that this requirement, as well as the limitation on the number of dual-appointed employees, would unilaterally redefine the

meaning of the term "civilian component" under the NATO SOFA.

As such, it would be inconsistent with the agreements between the United States and Germany and a divergence from past practice.

We appreciate Germany's continued support for U.S. forces stationed in the Federal Republic and look forward to further discussion on the status of civilian employees at AFRICOM.

Sincerely,

John M. Koenig

13. (C) Ammon responded positively to the letter and noted that Germany wanted to be as flexible as possible with our requests. He promised to carefully review the letter with his legal department; we have subsequently been told to expect a response before the end of August. Ammon and his team (including MFA Deputy Director General for Legal Affairs Dr. Susanne Wasum-Rainer) demonstrated a great deal of interest in USAFRICOM, what its mission is, how it would work with individual African countries, and the role of non-military advisors. Ammon explained that it was unfortunate that the numerical (i.e. 100 person) ceiling had been asserted in Dr. Witschel's letter but noted that number was initially mentioned by the US Embassy. NOTE: While it is true we mentioned the number 100, the Germans misinterpreted the context. END NOTE.

14. (C) Wasum-Rainer then emphasized that German domestic legislation does not permit the granting of privileges and immunities outside the provisions of diplomatic/consular conventions and the NATO Status of Forces Agreement. Although recognizing that domestic legislation places limits on policymakers, however, Wasum-Rainer did not rule out the possibility of granting status to non-DoD USG employees "on an exceptional basis." She stated, however, that this could not become the rule and implied additional thought would need to be given to find a "mutually acceptable solution." She also encouraged the AFRICOM representatives to cite the preamble to the GER-US "Presence Convention" in response to anyone challenging the legal basis for the presence of AFRICOM's headquarters in Germany. NOTE: These comments from Wasum-Rainer came before she'd had time to digest the

arguments made in the letter from paragraph two above and should therefore not be taken as a final German position.  
END NOTE.

¶5. (C) Also attending the meeting were USAFRICOM Political Advisor Jerry Lanier and USAFRICOM Legal Advisor Col. Jon Lightner. Lanier and Lightner met later that day with the MOD, and briefed Bundestag (Parliament) staffers and academics at a prominent German think tank (Stiftung Wissenschaft und Politik). During the briefing with MOD State Secretary Wolf, Wolf expressed great interest in the organization and mission of USAFRICOM and termed it "revolutionary." He also noted the strong support of his Ministry for USAFRICOM and encouraged close cooperation between USAFRICOM, the EU, and NATO and specifically encouraged USAFRICOM to create a position for a liaison officer from the EU.

¶6. (SBU) Embassy will continue to press GOG for maximum flexibility in resolving the SOFA issues for non-DOD civilian employees of USAFRICOM and will report any substantive response septel.

TIMKEN JR